

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
Administration of the)
North American Numbering Plan)
) CC Docket No. 92-237
Request for Comment on North)
American Numbering Council Letter)
Seeking Clarification of the Term)
"Technology Neutral")

BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of its affiliated companies, by counsel, files its comments on the issues raised in the North American Numbering Council's August 22, 1997 letter (NANC Letter) requesting guidance from the Federal Communications Commission on the meaning of "technological neutrality."¹

**IMPLEMENTING LRN-BASED NUMBER POOLING PRIOR
TO ALL CARRIERS BEING ABLE TO IMPLEMENT LRN-BASED
NUMBER PORTABILITY IS NOT TECHNOLOGY NEUTRAL**

Existing Commission guidelines governing North American Numbering Plan (NANP) resources, which were originally enumerated in the *Ameritech Order*,² state that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making

¹ Public Notice, *Common Carrier Bureau Seeks Comment on North American Numbering Council Letter Seeking Clarification of the Term "Technology Neutral,"* DA 97-2234 (rel. October 20, 1997) (Public Notice).

² *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) (*Ameritech Order*).

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numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.³ In the *Ameritech Order*, the Commission stated:

In general, we believe that a successful administration of the NANP will not unduly favor or disadvantage any particular industry segment or group of consumers. Similarly, we believe that the administration of the plan should not unduly favor one technology over another.⁴

The Commission found that an area code relief plan proposed by Ameritech in its capacity as central office code administrator/708 Relief Coordinator, which resulted in the “assignment of numbers based on whether the carrier provides wireless service,” was not consistent with its number administration objectives, including the objective that the administration of the NANP not unduly favor one technology over another.⁵ The Commission found that the proposed area code relief plan at issue imposed significant costs and burdens on wireless competitors,⁶ that paging and cellular companies would be placed at a distinct disadvantage,⁷ that a disproportionate burden

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Second Competition Order*), at ¶ 281. In *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588 (1995) (*NANP Order*), at ¶ 15, the Commission enumerated its objectives as follows:

- * Administration of the plan must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers.
- * Administration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers.
- * Administration of the NANP should not unduly favor one technology over another. The NANP should be largely technology neutral.

⁴ *Ameritech Order* at ¶ 18.

⁵ *Id.* at ¶ 29.

⁶ *Id.* at ¶ 20.

⁷ *Id.* at ¶ 27.

would fall on wireless carriers and their customers and that significant competitive disadvantages would be imposed on wireless carriers, while certain advantages would be given to wireline carriers.⁸

Most recently, in the Commission's *Universal Service Proceeding*, the Commission noted that:

[t]he Joint Board correctly recognized that the concept of technological neutrality does not guarantee the success of any technology supported through universal service support mechanisms, but merely provides that universal service support should not be biased toward any particular technologies. We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participating in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies.⁹

The neutral bias requirement articulated in the Commission's *Universal Service Order* is consistent with the Commission's earlier articulated requirement that a technologically neutral administration of a NANP resource will not unduly favor one technology over another.

In light of the foregoing principles, all technologies must continue to have equivalent access to NANP resources in order for any plan designed to delay area code exhaust, including number pooling, to be technologically neutral. Recognizing that the wireless industry utilizes a different technology than the wireline industry that it therefore faces special technical challenges in implementing number portability,¹⁰ the FCC established separate, asymmetrical Location Routing Number (LRN)-based long term number portability (LNP) implementation requirements for

⁸ *Id.* at ¶ 35.

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (May 8, 1997), at ¶49.

¹⁰ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8439-40, ¶ 165 (1996), *recon. pending*.

wireline and wireless carriers so that wireline carriers will be LNP-capable prior to wireless carriers.¹¹

As the NANC letter notes, implementation of number pooling under an NXX-X LRN scheme is “technically limited to LRN-capable switches.”¹² Under the Commission’s previously established LNP implementation schedules, one technology (wireline carriers subject to the LNP mandate) will have LNP capability prior to another technology (wireless carriers subject to the LNP mandate). Implementing number pooling prior to the time when all technologies subject to the LNP mandate have LNP-capable switches will exclude one technology from participating in number pooling from its outset.¹³ Such an implementation will not only be biased in favor of wireline technology, it will prevent the excluded wireless technology from having access to a category of NANP resources: the resources made available through NXX-X LRN number pooling. Implementation of LRN-based number pooling in the face of asymmetrical LRN-based LNP implementation is therefore fundamentally at odds with the Commission’s previously articulated principles of technological neutrality.

¹¹ All wireline LECs are required to begin a phased deployment of LNP in the 100 largest Metropolitan Statistical Areas (MSAs) no later than October 1, 1997, and complete deployment in those MSAs by December 31, 1998. *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, CC Docket 95-116, FCC 97-94 (March 11, 1997) at ¶¶ 60, 78-80. The Commission required that all cellular, broadband PXSA, and covered SMR carriers have the capability of querying the appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 3, 1998, and that CMRS providers subject to the Commission’s LNP requirements must offer number portability through their networks, including the ability to support roaming, by June 30, 1999. 11 FCC Rcd at 8439-40, ¶¶ 165-66.

¹² Public Notice, p. 2.

¹³ As the NANC letter points out, the same analysis applies in the case of Unassigned Number Porting. *Id.*

The NANC letter states that it is the position of some NANC members that implementation of LRN-based number pooling prior to the implementation by all technologies of LRN-based LNP would not be “anticompetitive” as long as “adequate number resources are available to all carriers.”¹⁴ This begs the question, however, of whether such an implementation requirement is “technology neutral.” Assume for the sake of argument that numbering resources of some kind were made available to wireless carriers while wireline carriers had access to the number resources to be made available as a result of LRN-based number pooling. While such “separate but equal” treatment of wireless carriers may be squared with the Commission’s second requirement that administration of the NANP should not unduly favor or disadvantage any particular industry segment,¹⁵ it fails to pass the Commission’s third requirement that “administration of the NANP should not unduly favor one technology over the other.”¹⁶ In sum, whether a NANP resource management plan is “anticompetitive” and whether or not a plan is “technology neutral” are two separate and distinct legal questions.

Moreover, BellSouth is not convinced that a specific NANP resource plan that is not “technology neutral” can be “cured” by a claim of competitive neutrality. In the case of LRN-based number pooling, wireline carriers will undertake significant costs and efforts to implement the technology, changing systems and operations to accommodate a NANP resource management plan that all technologies are not able to participate in. In the meantime, if the non-participating wireless carriers are permitted, as is implied by the NANC letter, access to NANP resources on the magnitude of ten times the amount of resources available to wireline carriers, it is not difficult

¹⁴ *Id.*

¹⁵ *Ameritech Order* at ¶ 18; *NANP Order* at ¶ 57; and *Second Competition Order* at ¶ 281.

¹⁶ *Id.*

to see that such an implementation plan, in addition to failing the technology neutral test, would in fact “unduly disadvantage” the implementing wireline LECs.

In any event, there is no guarantee that wireless carriers would have guaranteed access to 10,000 number NXX blocks while wireline LECs are required to pool at the 1,000 number level. In any area code jeopardy or exhaust situation, it is likely that there will be no NXXs available for assignment to wireless carriers, either because they have already been assigned or because they have been dedicated to the pool to serve more carriers. In this case, wireless carriers simply will not have access to any numbering resource, solely on account of their status as wireless carriers who cannot participate in LNP. Such a result is clearly prohibited under all three of the Commission’s requirements: new entrants will be discouraged, one industry segment will be unduly disadvantaged, and the management plan will be biased in favor of wireline technology.¹⁷

Moreover, the 1996 Act requires that the costs of number administration be borne by all carriers on a competitively neutral basis.¹⁸ The FCC has determined that all carriers will contribute to cost recovery based on revenues. It is simply not competitively neutral to compel wireless carriers to bear the costs of a NANP resource management plan that excludes their technology from participation in the plan and, consequently, from access to the NANP resources that are the subject of the plan. Finally, it is critical that the entire industry not risk fulfilling the Commission’s LNP mandate. As the Commission is aware, LNP developmental issues are

¹⁷ Wireless carriers cannot use, due to technical constraints, blocks of less than 10,000 telephone numbers prior to LNP implementation. It is therefore not feasible to assign 1,000 blocks to wireless carriers in the interim, notwithstanding current efforts in some states to require such assignments.

¹⁸ 47 U.S.C. § 251(e)(2).

impacting an ambitious LNP implementation schedule.¹⁹ LRN-based number pooling has not received the time or attention that LRN-based LNP has, and requiring immediate implementation of number pooling could further jeopardize LNP implementation. Given the industry's current state of knowledge, it would be extremely difficult, if not impossible, to pinpoint the nature of any technical difficulties that arose out of premature implementation.

CONCLUSION

Number pooling is a meritorious concept that deserves the appropriate attention of the industry. However, as a fundamental matter, any NANP resource management plan that requires that participating carriers be capable of providing service provider portability cannot be considered technology neutral unless and until all carriers have the ability to participate in or utilize the methodology. It would be appropriate to limit current pooling efforts to limited trials, in order to assess the scope of technical issues relating to pooling. However, LRN-based number pooling should not be fully implemented until all carriers, both wireless and wireline, are LNP capable.

There are two important processes relating to numbering resources that are currently taking place that should not be jeopardized by the premature implementation of number pooling. The first is the implementation of LNP, scheduled to take place by the end of the second quarter of 1999 in the case of wireless carriers. The second is the transfer of central office code administration, including area code relief efforts, which is scheduled to be completed by mid-second quarter 1999. Now is not the time to introduce major changes or disruptions to either

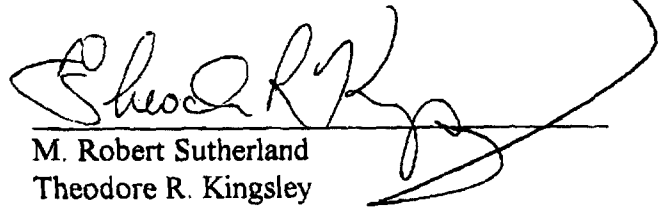
¹⁹ Ex parte letter from Link Brown, Director, Federal Regulatory, to William F. Caton, FCC, CC Docket No. 95-116, dated September 19, 1997; ex parte letter from Cynthia Cox, Executive Director, BellSouth, to William F. Caton, FCC, dated October 17, 1997.

schedule, both of which fulfill the Commission's stated purpose of facilitating entry into the communications marketplace by making numbering resources available on an efficient and timely basis, particularly when the "change" is a plan that is technology biased on its face and is potentially anticompetitive.²⁰

Respectfully submitted,

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²⁰ To ensure technical neutrality and competitive parity, a single, nationwide plan to implement number pooling is imperative. Wireless technology is inherently interstate in nature; often, one switch serves multiple states.